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Judge Christopher M. Alston
CHAPTER 13
Hearing Date: July 11, 2019
Hearing Time: 9:30 a.m.

4 UNITED STATES BANKRUPTCY COURT
5 WESTERN DISTRICT OF WASHINGTON AT SEATTLE

6 IN RE:

7 **WALKAMA, Gary and Vonda,**

8 Debtors.

No. 15-17221

**DEBTORS' MEMORANDUM OF
AUTHORITIES RE MOTION FOR
RELIEF FROM STAY BY ABINBOLA
NELAMS and PROOF OF SERVICE**

10 COME NOW, the Debtors, by and through their attorney, Travis A. Gagnier, and files
11 this Memorandum of Authorities as requested by the Court at the hearing which was held on
12 May 23, 2019. The Court raised concerns that Nellams was not told of the hearing date for the
13 confirmation hearing the 341 Notice prepared by the Clerk and provided to all creditors in the
14 case (including Nellams).

15 **I. FACTS**

16 The Debtors filed this case on December 9, 2015. All creditors were noticed by the BNC
17 on December 12, 2015, per docket No. 12 in this case. All creditors were serviced with the 341
18 Notice prepared by the Clerk at docket No. 7 in this case. Pursuant to Rule 201(c)(2), the Debtors
19 request that the Court take judicial notice of the docket and filings in this proceeding as well as
20 the docket and filing in the Federal District Court proceeding (#13-cv-01504-JCC). A copy of
21 the District Court Docket is attached hereto as an Exhibit. Nellams was added to the creditor
22 matrix and noticed on December 22, 2015, per docket No. 17 in this case. He was provided with
23 a copy of the plan and 341 notice issued by the Clerk. Proof of Service, Docket no. 17 in this
24 case.
25
26

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1 Referring to the 341 notice, it did not include a date for the confirmation hearing. Docket
2 no. 7 in this case. Based on counsel's research, it appears that new forms took effect on
3 December 1, 2015. For the month of December 2015 only, the 341 notices were issued without
4 hearing dates for confirmation where the plan was not filed with the original filing. Starting in
5 January 2016, the language in the 341 notice was changed to include the confirmation hearing
6 date in all 341 notices. All creditors received the notices without the date, not just Nellams. The
7 341 notices did include, however, a deadline to file proofs of claim and other details about the
8 case to put creditors on notice. Docket no. 7 in this case.
9

10 Nellams had actual notice of the bankruptcy filing. His counsel acknowledged as much at
11 the hearing on the record on May 23, 2019. As discussed in the prior filing, the District Court
12 case was stayed by the filing of the case and all parties were aware. Debtor filed an LCR 89
13 notice with the Federal District Court on that docket at No. 120 in the District Court case on
14 December 22, 2015.

15 **II. "PROVIDED FOR IN THE PLAN"**

16 At the hearing on May 23, 2019 the Court inquired whether the debt owed Nellams was
17 provided for in the Debtors' Plan. The unliquidated and disputed claim owed Nellams would be
18 an unsecured claim. Unsecured claims are "provided for" in the Form Chapter 13 Plan which all
19 debtors are required to use in the Western District of Washington. Specially, unsecured claims
20 are provided for in Paragraph IV.E of the Form Plan in effect at the time and confirmed in this
21 case.
22

23 The U.S. Supreme Court in *In Rake v. Wade*, (508 US 464 (1993)) interpreted the phrase
24 "provided for" in § 1325(a)(5) of the Bankruptcy Code. In *Rake*, the debtors filed for Chapter 13
25 bankruptcy while in default on their home mortgages, and their bankruptcy plans proposed to
26 cure the defaults through repayment schedules that would be administered inside the plans. 508

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1 U.S. at 466–67. The Court determined that “[t]he most natural reading of the phrase to ‘provid[e]
2 for by the plan’ is to ‘make a provision for’ or ‘stipulate to’ something in a plan.” Id. at 473.

3 Applying the *Rake* rationale in the instant case leads to the conclusion that if Nellams is
4 the holder of an unsecured claim, it is part of a class for which the Plan has provided. In other
5 words, Nellams’ claim is “provided for” by paragraph IV.E of the confirmed plan.

6 It is important to note, however, that regardless of class or provision, Nellams did not file
7 a proof of claim in this matter. The 341 notice to creditors in this case (and all cases) clearly
8 states the deadlines for creditors to file claims. Nellams chose not to file a claim. So, even though
9 Nellams is a member of the class of unsecured creditors, since he did not file a claim, he will not
10 be entitled to a payment from the Chapter 13 trustee should funds be available for unsecured
11 creditors.
12

13 **III. DUE PROCESS**

14 At the last hearing the Court had a question in regards to the notice provided creditors in
15 this case in regards to the confirmation hearing. Rather than not being “provided for” in the plan,
16 it seems the concern is more aptly of whether or not Nellams was deprived of due process
17 because the 341 notice issued by the Clerk during the month of December 2015 in all Chapter 13
18 cases did not include the date of the confirmation hearing.
19

20 In this case Mr. Nellams was listed as a creditor and received actual notice of the
21 bankruptcy case no later than December 22, 2015, when the LCR 89 notice was filed in the
22 Federal District Court proceeding. Nellams counsel acknowledged that he and his client were
23 aware of the bankruptcy filing back then. The Bankruptcy Notice sent out by the Court was sent
24 to Mr. Nellams at his counsel’s address notifying him of the Chapter 13 filing. Darryl Parker,
25 Nellam’s attorney, filed a Notice of Appearance in the federal district lawsuit Nellam filed
26 against the debtors and others on August 23, 2013. This is important as Parker was counsel for

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1 Nellams when a Notice of Bankruptcy Filing was filed in the Federal District Court lawsuit on
2 December 22, 2015 (Chapter 13 filed December 9, 2015) again putting Nellams on notice of a
3 bankruptcy filing. That would have been the second time Nellam was informed of the
4 bankruptcy filing.

5 In the Ninth Circuit, according to *Matter of Gregory*, 705 F.2d 1118, 1120 (9th Cir.
6 1983), notice of the bankruptcy filing puts a creditor on notice of the filing and thus he was on
7 inquiry notice, thus, satisfying due process. Another case, *In re Coastal Alaska Lines, Inc.*, 920
8 F.2d 1428, 1431 (9th Cir. 1990), similarly held that although the creditor was not listed by the
9 debtor in court documents, and thus failed to receive actual notice of the claims bar date, the
10 creditor received sufficient notice of the bankruptcy and creditor's meeting when it was informed
11 of the bankruptcy by the debtor's attorney. The Court in *Coastal* held that "[l]ike the creditors in
12 *Gregory* and *Price*, [the creditor] actually received information about the bankruptcy proceedings
13 that was sufficient to put it on inquiry notice. Its due process claim thus fails." *Coastal* at 1431.

14 **IV. CONCLUSION**

15 There is no valid reason to terminate the automatic stay to liquidate a claim that has been
16 provided for in the Debtors' Chapter 13 bankruptcy proceeding. "Provided for" is a term of art
17 defined by the Supreme Court in *Rake* and Nellams' claim was clearly "provided for" in the
18 confirmed plan. Nellams' had actual notice of the bankruptcy case early on, no later than
19 December 22, 2015, and acknowledged as much as the last hearing. Thus, his due process rights
20 were not violated by not being advised in the 341 notice of the date of the confirmation hearing.
21 All of this is beside the point, too, that Nellams waived any right to receive funds from this case
22 regardless of the contents of the plan when he failed to file a proof of claim by the deadline set
23 forth in the notices he did receive. Thus, whatever is owed, if anything, will be discharged upon
24 completion of their Chapter 13 bankruptcy proceeding without the need for further litigation. The

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1 motion for relief from stay should be denied.

2 Respectfully submitted this 12th day of July 2019.

3 /s/ Travis A. Gagnier
4 Travis A. Gagnier, #26379
5 Attorney for Debtors

6 **PROOF OF SERVICE**

7 I declare under penalty of perjury under the laws of the State of Washington that I filed
8 the original of the foregoing with the United States Bankruptcy Court in Seattle and served a true
9 copy thereof to Darryl Parker via ECF on the date filed with the Court
10

11 /s/ Shari L. Moody
12 Shari L. Moody
13 Sr. Paralegal
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